

## Item SPR06-17 Response Form

**Title:** Service (amend Cal. Rules of Court, rule 1.21)

- ☐ Agree with proposed changes
- ☐ Agree with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

☐ Commenting on behalf of an organization

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102  
**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Friday, June 23, 2006
---

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,  
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-17

Title	Service (amend Cal. Rules of Court, rule 1.21)
Summary	Proposed new rule 1.21 would be amended to clarify the meaning of “serve and file” and to require proofs of service to indicate which party each attorney served is representing.
Source	Civil and Small Claims Advisory Committee Hon. Elihu M. Berle, Chair
Staff	Patrick O’Donnell, Committee Counsel, 415-865-7665 patrick.o’donnell@jud.ca.gov
Discussion	<p><i>Service</i></p> <p>Rule 1.21 (Service), which is proposed to be part of new title 1 (Rules Applicable to All Courts) in the pending reorganization of the California Rules of Court,<sup>1</sup> contains a provision relating to service on a party or, if the party is represented, on the party’s attorney. (See rule 1.21(a).) The pending version of subdivision (a) contains references to giving “notice.” The rule would be simpler and clearer if the references to “notice” are eliminated and the rule focuses exclusively on “service”; hence, it is proposed that the references to giving “notice” be deleted.</p> <p><i>Serve and file</i></p> <p>The expression “serve and file” is used extensively in the California Rules of Court. It is currently defined in several places in the rules. (See Cal. Rules of Court, rules 200.1(10) and 5.10(e).) Under the pending reorganized rules of court, this definition would be placed in new rule 1.21(b) in title 1. The definition in rule 1.21 is the same as in the existing rules.</p> <p>The current definition states that “serve and file” means that “a document filed in a court must be accompanied by a proof of service, in a manner permitted by law, of one copy of the document on the attorney for each party separately represented and on each self-represented party.” (See rule 1.21(b).) This definition is difficult to understand and is not completely accurate.</p> <p>To make it clearer and more precise, the definition of “serve and file” would be changed. Rule 1.21 would be amended to state that “As used in these rules, unless a specific statute or rule provides for a different</p>

---

<sup>1</sup> This proposed rule has been recommended for inclusion in new title 1 under the rules reorganization, but has not yet been adopted by the Judicial Council.

method for filing or service, a requirement to ‘serve and file’ a document means that a copy of the document must be served on the attorney for each party separately represented, on each self-represented party, and on any other party or entity when required by statute or rule, and that the original document must be filed with the court accompanied by a proof of service.”

*Proof of service*

Proposed new rule 1.21 refers to proof of service. But, like some of the rules on which it is based, it does not require that a proof of service on multiple attorneys indicate which party each of the attorneys served is representing.

To make proofs of service clearer, a new subdivision (c) would be added to rule 1.21. This subdivision would include the following requirement: “If the proof of service names attorneys for separately represented parties, it must also state which party each of the attorneys served is representing.” This provision will ensure that proofs of service identify the party that each attorney represents.

---

Attachment

Rule 1.21 of the California Rules of Court, which is included in the Reorganized Rules, would be further amended, effective January 1, 2007, to read:

**Rule 1.21. Service**

**(a) Service on a party or attorney**

Whenever a ~~notice or other~~ paper is required to be served on ~~or given to~~ a party, the service ~~or notice~~ must be made on the party's attorney if ~~there is one~~ the party is represented.

**(b) Proof of Service "Serve and file"**

As used in these rules, unless a specific statute or rule provides for a different method for filing or service, a requirement to "serve and file" a document means that a document filed in a court must be accompanied by a proof of service, in a manner permitted by law, of one a copy of a the document must be served on the attorney for each party separately represented, ~~and~~ on each self-represented party, and on any other person or entity when required by statute or rule in a manner permitted by law, and that the original document must be filed with the court accompanied by a proof of service.

**(c) Proof of service**

As used in these rules, proof of service means a declaration stating that service has been made as provided in (a) and (b). If the proof of service names attorneys for separately represented parties, it must also state which party each of the attorneys served is representing.